EVIDENCE—CORROBORATION BY PREVIOUS "CONSONANT STATEMENT."—Plaintiff sued defendant company to recover for injuries due to latter's alleged negligence, and testified that he was on a car at the time he was injured. Defendant introduced evidence of previous statements by plaintiff to the effect that he was not on the car at that time. In rebuttal plaintiff introduced a witness who testified that immediately after the accident plaintiff had stated to witness that he was on the car. The defendant objected to the admission of this evidence. *Held,* that though the evidence was open to objection on the ground that it was hearsay, yet it was admissible as tending to support the credibility of plaintiff, who had been impeached by the evidence as to his other statements. *Lyke* v. *Lehigh Valley R. Co.* (Pa. 1912) 84 Atl. 595.

For a discussion of the principles involved, see NOTE AND COMMENT, p. 239, ante.

EVIDENCE—SELF-CONTRADICTORY STATEMENTS.—On the trial of defendant for crime, the prosecution introduced evidence to the effect that defendant had left the place where the offense was alleged to have been committed at about one o'clock in the morning. A witness for the defendant then testified that the latter arrived at said defendant's home at about twelve o'clock. This witness was then interrogated upon cross-examination as to whether he had not stated to one Johnson that he was asleep when defendant came home on the night in question. Upon denial by the witness of any such statement, said Johnson was called and testified that the witness had made such a statement to him. *Held,* that the reception of the prior contradictory statement of defendant's witness was not error. *State* v. *Swartz* (Kan. 1912) 126 Pac. 1091.

In answer to the argument of appellant that the inquiry on cross-examination related to a collateral matter and that the prosecution was concluded by the denial, the court said, "The general rule is that a witness can be contradicted only upon some matter material and relevant to an issue in the case. A general test is: Could the fact, as to which the prior self-contradiction is predicated, have been shown in evidence for any purpose independent of the self-contradiction." The court in considering the two classes of facts set forth in WIGMORE, EVIDENCE, § 1021, —, first, those relevant to the issue, and second, those discrediting the witness as bias, corruption, and, occasionally, want of skill or knowledge, and the like,—deemed the evidence in question admissible under each class, but with reference particularly to its admissibility under the second class, Justice BENSON used the following language, "That a person was asleep at the time of a transaction which he assumes to relate certainly tends to show lack of knowledge, and therefore to discredit his statements. The apparent repugnancy affects the credibility of the witness. When the physical condition of a witness is such as to render him incapable of perceiving, understanding, or remembering facts to which he has testified, such condition may be shown to impeach his credibility." *Green* v. *Texas,* 53 Tex. Cr. Rep. 490, 110 S. W. 920, 22 L. R. A. N. S. 706, cited in the main case, while setting forth a principle applicable in a general manner to the case in hand, must be conceded to have some distinguishing features.

The test enunciated in the principal case was drawn from *Attorney-General* v. *Hitchcock,* 1 Exch. 91, and according to WIGMORE, EVIDENCE, § 1020, "is expressly accepted in only a few of the United States." Kansas seems firmly wedded to this test of collateralness, however, since not only in the present but also in a previous case, *State* v. *Sweeney,* 75 Kan. 265, it has been adopted and acted upon. *Attorney-General* v. *Hitchcock,* supra, in conjunction with other cases upon this subject, is carefully reviewed and considered in *Williams* v. *State,* 73 Miss. 820.

HOMICIDE—SELF-DEFENSE—DUTY TO RETREAT.—The defendant was convicted of murdering his wife. The evidence showed that the killing took place in defendant's house, which was occupied by himself and wife. The judge instructed the jury, in effect, that before the defendant could establish self-defense he must show that there was no convenient or reasonable mode of escape open to him by retreating, unless by retreating he increased his danger. *Held,* this instruction was erroneous. *Watts* v. *State* (Ala. 1912) 59 South. 270.

"It is an admitted doctrine of our criminal jurisprudence, that when a person is attacked in his own house, he is not required to retreat further." *Jones* v. *State,* 76 Ala. 8; *Peo.* v. *Lewis,* 117 Cal. 186; 1 HALE, P. C., 486; *Peo.* v. *Newcomer,* 118 Cal. 263; 21 CYC. 823. As the court said in the principal case, this rule is "of ancient origin, and indeed is deeply rooted in the elemental instincts of humanity. In its original applications it doubtless had in view only attacks from external aggressors." But the court had previously applied the rule in a case where deceased and defendant were tenants in common, *Jones* v. *State, supra;* and also in a case where deceased and defendant were husband and wife,—*Hutchinson* v. *State,* 170 Ala. 29. In the latter case the court said, "There must be somewhere a person may stop and defend himself or herself, when they have the right otherwise to do so. The fact that two may live in the same house, have the same dwelling or place of business, does not take away from either in favor of the other the right to stop there and defend himself." The principal case is illustrative of what seems to be the modern tendency in regard to the duty to retreat in general. As was said in *Runyon* v. *State,* 57 Ind. 80, "The tendency of the American mind seems to be very strongly against the enforcement of any rule which requires a person to flee when assailed." See RICE, EVIDENCE, § 360; *Beard* v. *U. S.,* 158 U. S. 550.

INSURANCE—DELIVERY OF MUTUAL BENEFIT CERTIFICATES.—An insurance contract of a fraternal order provided that the benefit certificate "shall not become effective until delivered by the camp clerk to the applicant while in good health." The applicant paid the advance assessments, was initiated and performed all other conditions precedent. Under these circumstances, while the member was in good health, the Benefit certificate was received by the local clerk. A few days later the member was fatally injured, but before his death the certificate was delivered to his son. *Held,* delivery to the clerk was delivery to the member, and a delivery into the actual possession of the